

## Federal Communications Commission

DA 97-667

APR 14 11 31 AM '97

Before the  
 DISPT Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
 Table of Allotments,  
 FM Broadcast Stations.  
 (Dassel and Hutchinson,  
 Minnesota)

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MM Docket No. 97-114  
 RM-9059

## NOTICE OF PROPOSED RULE MAKING

Adopted: April 2, 1997

Released: April 11, 1997

Comment Date: June 2, 1997

Reply Date: June 17, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by North American Broadcasting Co., Inc. ("North American"), licensee of Station KKJR, Channel 296A, Hutchinson, Minnesota, requesting the substitution of Channel 295C3 for Channel 296A at Hutchinson. North American also requests the reallocation of Channel 295C3 from Hutchinson to Dassel, Minnesota, and modification of the license for Station KKJR to specify Dassel as its community of license. North American states that it will file an application for Channel 295C3 at Dassel.

2. North American contends that its request complies with Sections 1.420(g) and (i) of the Commission's Rules, which permits the modification of a station's license to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). North American states in support of its request that the allotment of Channel 295C3 would provide Dassel, a community of 1,082 people with its first local aural transmission service whereas Hutchinson would retain service from Station KDUZ(AM). North American points out that Dassel is listed in the 1990 Census as an incorporated community. Further, Dassel has its own library, several churches, recreational facilities, lodging and meeting facilities and a number of professional health care providers. North American states that Dassel is governed by a mayor and city council and has its own police and fire departments. North American believes that the community is deserving of a first local

service as Dassel possesses all the social, economical and cultural components that are commonly associated with community status for allotment purposes. According to North American, while there will be no loss of service, there will be a substantial gain in service area and population. The proposed substitution of Channel 295C3 for Channel 296A will permit Station KKJR to increase its power to 25 kilowatts from 3 kilowatts, providing a 237% increase in area. North American believes it will increase the population served by Station KKJR from 11,160 to 87,730 people.

3. We believe the public interest could be served by the substitution of Channel 295C3 for Channel 296A at Hutchinson and reallocation of Channel 295C3 to Dassel, since it will provide Dassel with its first local FM transmission service and enable Station KKJR to expand its service area. North American has indicated that it intends to relocate its transmitter, which usually creates areas which lose existing service as well as areas that gain new reception service. A staff analysis agrees with the information provided by North American that although there will be an area gaining service, the relocation of the transmitter will not create a loss area. Therefore, North American is not required to provide additional information concerning gain and loss areas or reception services.

4. Channel 295C3 can be allotted to Dassel, Minnesota, in compliance with the Commission's minimum distance separation requirements. North American has specified a site 11.9 kilometers (7.4 miles) northwest of the community.<sup>1</sup>

5. In view of the fact that the proposed allotment would provide a first local aural transmission service to Dassel, Minnesota, the Commission believes the public interest would be served by soliciting comments on North American's proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the communities listed below:

Community	Channel No.	
	Present	Proposed
Hutchinson, Minnesota	296A	-----
Dassel, Minnesota	-----	295C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

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<sup>1</sup> The coordinates for Channel 295C3 at Dassel are 45-08-30 and 94-26-00.

7. Interested parties may file comments on or before **June 2, 1997**, and reply comments on or before **June 17, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Gregg P. Skall  
Pepper & Corazzini, L.L.P.  
1776 K Street, N. W., Suite 200  
Washington, D. C. 20006

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.